

Chesapeake Bay Local Assistance Board
Monday, September 16, 2002
James Monroe Building
101 N. 14th Street, Conference Room C
Richmond, Virginia

Members Present:

Mr. L. Clifford Schroeder, Chairman
Mr. Frank L. Benser
Mr. Robert J. Bannach
Mr. Donald W. Davis
Mr. Colin D. Cowling
Mr. Stuart Mendelsohn
Mr. Daniel B. Nice

Members Absent:

Ms. Anna Lee Bamforth
Ms. Dama E. Rice

Staff Present:

Acting Executive Director, C. Scott Crafton
Administrative Assistant, Carolyn J. Elliott
Chief of Environmental Planning, Martha Little
Principal Environmental Planner, Shepard Moon
Principal Environmental Planner, Shawn Smith
Principal Environmental Planner, David Kovacs
Principal Environmental Planner, Lee Tyson
Principal Environmental Planner, Doug Wetmore
Senior Environmental Planner, Robbie B. Rhur

Others:

JLARC, Laura Whiteley
JLARC, Eric Messick
JLARC, Gerald Craver

Mr. Schroeder called the meeting to order at 10:07 a.m. He called the role. All members were present except for Ms. Bamforth and Ms. Rice. Mr. Schroeder noted that there was quorum. Mr. Schroeder welcomed staff and guests and noted that materials for the days meeting were located on the back table.

Mr. Schroeder called for the approval of the June 17, 2002 Board Meeting Minutes.

Mr. Bannach motioned to approve the June 17, 2002 minutes as presented.

Mr. Davis seconded the motion.

Mr. Schroeder called for further comments. There were none.

Mr. Schroeder called for the vote. All members voted aye.

Mr. Schroeder asked Mr. Crafton to present the Director's Report.

Mr. Crafton provided an update for the Board regarding several agency activities. He began his presentation by noting that staff continued to work with Tidewater local governments to assist them in their efforts to amend their local Bay Act ordinances in order to be consistent with the amendments to the program's regulations. He said that staff had responded to a number of requests for assistance in the field. He advised that the number of site plans being sent in for staff review and comment had increased.

Mr. Crafton advised that Mr. Ron Wood had completed the work to update the agency's website, and the site was made active on September 4, 2002 with the same address, www.cblad.state.va.us. He also said that Mr. Wood had notified most of the agency customers and requested that they contact him if they found broken links.

Mr. Crafton discussed CBLAD's participation in the Public Participation Guidelines that had been established by the Board in order to govern the public participation process involved in regulatory actions. He noted that state law required that these be reviewed periodically to determine if changes were needed or if they needed to be kept in force at all. He advised that the Department was in the process of conducting such a review at this time, and apologized that he had not brought this to the Board's attention sooner.

Mr. Crafton went on to say that the process was straightforward and based on the need to proceed, he exercised his authority to act in their stead. He noted that the guidelines were advertised in Volume 18, Issue 23 of the Virginia Register on July 29, 2002 for a 30-day public comment period. He advised that no comments had been received, and noted that the completed periodic review report will be posted on the Virginia Regulatory Town Hall web site by November 29, 2002 in order to comply with the time period specified in Executive Order 21(02). He said that in order to meet this requirement, the agency needed to submit the report to the Virginia Register by October 30, 2002 for publication in the November 18, 2002 issue. He advised that he had appointed David Kovacs as the Regulatory Coordinator for the agency and that had informed him that meeting the deadline would not be a problem.

Mr. Crafton advised that review of two legislative bills, HB725 and HB726 impacted 2.2-4007 of the Code of Virginia and its public participation provisions. He said that it appeared necessary that changes be made to agency guidelines to include language and procedures mandated by these bills. Mr. Crafton noted that Mr. Kovacs was working with other Regulatory Coordinators in a continuing effort to have consistent language in each agency's public participation guidelines.

Mr. Crafton said that given the changes are mandatory, the agency would be able to utilize the exempt action final format that allows for the publication of final language without having to go through the formal APA regulation amendment process.

Mr. Crafton explained that the agency would coordinate the language changes for the final Periodic Review Report and file the report as an Exempt Action Final. He said that staff would finalize that so that the Board could take action.

Mr. Schroeder clarified with Mr. Crafton that the Board would not have to review the Periodic Review Report but would review and approve the Exempt Action Final.

Mr. Crafton replied that he believed the Regulatory Committee could meet within the time period so they can review what has been done and forward on to the full Board. Mr. Crafton went on to say that the Board would have to approve the Exempt Action Final and that he planned to have them do at the December 9, 2002 Board meeting.

Mr. Crafton went on to advise that Mr. Davis had been reappointed to the Board for another four-year term. However, he said he had not heard of any decision regarding replacements for Mr. Schroeder and Ms. Rice. He reminded the members that elections for Chair and Vice Chair are made during the December meeting. He also invited Mr. Schroeder and Ms. Rice to the December Board meeting in order to recognize them for the years of service as Chair and Vice Chair.

Mr. Schroeder stated that he would be happy to attend the December Board meeting and was certain that Ms. Rice would wish to attend as well.

Mr. Crafton advised that he had his exit interview with staff from JLARC, and that he understood that he would receive an exposure draft of the report during the last week of September. He advised members that he would mail them copies of the report, if allowed, or, if not, members would need to come in to the CBLAD office or JLARC office to review the report. He asked that their comments be returned very quickly since he only had a few days to respond.

Mr. Crafton advised that the JLARC staff would present their final report on the Bay Act program to the full the Joint Legislative Audit Review Commission on October 15, 2002. Mr. Davis asked Mr. Crafton to advise the Board of the time and place of this meeting. Mr. Crafton agreed to do so.

Mr. Crafton spoke about the Governor's request to prepare three alternative budget reduction plans reflecting the 7, 11, and 15 percent cuts respectively. He noted that the proposals had be to submitted to the Department of Planning and Budget by Friday, September 20, 2002. Mr. Crafton advised that in the absence of grant funding, maintaining program staff is a vital concern, since they would be called on for greater levels of assistance. He also advised that if the Governor determined that the agency would have to take the higher of the cuts, it would mean the elimination of the Polecat Creek project and possibly the loss of one to three positions. Mr. Crafton also advised that any reduction above 7 percent for this fiscal year will impact the commitments in the Executive Agreement he has with the Governor.

Mr. Crafton asked if there were any questions. There were none.

Mr. Crafton advised that there had been ongoing discussions with the Department of Conservation and Recreation regarding the proposed merger and other reorganization plans, however, at this time he was not at liberty to discuss the proposals. He also said that Secretary Murphy's plan had to be submitted to the Governor by November 1, 2002.

Mr. Schroeder asked Mr. Crafton if he was aware of what the Wilder Commission report had to say. Mr. Crafton reported that he knew only what he had seen in the newspaper, and CBLAD had not been mentioned.

Mr. Schroeder asked if there was any possibility that the merger would be in name only.

Mr. Crafton said that Secretary Murphy understood how important the agency's role is. However, it is unknown at this time what direction the agency would take. The question about whether the agency would become a division or whether it would be dispersed is not known.

Mr. Schroeder responded the importance of keeping the Board advised.

Mr. Crafton promised that the Board would know as soon as he did.

Mr. Nice asked what kind of savings the state was hoping to find by merging CBLAD with DCR.

Mr. Crafton stated that the savings would be negligible.

Mr. Schroeder stated that the upcoming 2003 General Assembly was going to be not only short but very busy, and that perhaps taxing other commodities would be another way to recover from the budget crisis.

Mr. Nice asked Mr. Crafton about his position. Mr. Crafton responded that he was still functioning in an "acting" Director capacity.

Mr. Crafton closed his comments by noting the remainder of the agenda.

Mr. Schroeder thanked Mr. Crafton for his report, and the fact that the report was in writing for the Board's convenience. Mr. Schroeder noted that there were no Consent Items, and called for the presentation of Local Program Reviews, Phase I. He asked Mr. Tyson to present the City of Norfolk's program.

Mr. Tyson noted that the City's Phase I program was found consistent with the Act and Regulations on March 27, 1997. He said that on October 20, 1998, the City adopted a number of amendments to the local code that were primarily housekeeping in nature; however, two amendments were considered major program modifications. He said that the modifications dealt with criteria for granting nonconforming use and development waivers and the criteria for administratively granting exceptions for accessory structures in the seaward 50 feet portion of the RPA.

Mr. Tyson said that on September 27, 1999, the Board found the City's Phase I program consistent on the condition that the two amendments identified be modified or deleted. He noted that on November 9, 1999, the City Council amended the local code by removing the first identified amendment in the code, and on September 27, 2000 the Board found the City's Phase I program consistent with the condition that the remaining item be modified or deleted by June 30, 2001.

He said that two deadline extensions were granted to the City to complete this task and the initial deadline was set for June 30, 2002. He said that on July 9, 2002, the City Council amended the code to remove the language concerning the administrative approval of exceptions for accessory structures in the seaward 50 feet portion of the RPA.

Mr. Tyson advised that the City of Norfolk's Phase I program is now fully consistent with the Act and Regulations and said that the Southern Area Review Committee recommended to the full Board on August 13, 2002 that the City of Norfolk's Phase I program be found consistent.

Mr. Tyson asked if there were any questions. Mr. Davis asked what board or commission considered exception requests in the City of Norfolk. Mr. Tyson deferred the question to Lee Rosenberg, representing the City of Norfolk, who informed Mr. Davis that the City of Norfolk Board of Zoning Appeals heard exception requests.

Mr. Nice motioned to find the City of Norfolk's Phase I program consistent with §10.1-2109 of the Act and §§9VAC10-20-60.1 and 2 of the Regulations.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 16, 2002

RESOLUTION

LOCAL PROGRAM, PHASE I

CITY OF NORFOLK - #10

Determination of Consistency – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1 (a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Norfolk adopted a local program to comply with § 9VAC10-20-60 1 and 2 on August 28, 1990 along with amendments adopted on March 3, 1992 and October 27, 1992; and

WHEREAS the City of Norfolk's adopted program was reviewed by the Chesapeake Bay Local Assistance Board on September 27, 1999, and was found consistent with § 10.1-2109 of the Act and §§

9VAC10-20-60 1 and 2 of the Regulations subject to one recommendation for consistency that was to be addressed by September 27, 2000; and

WHEREAS the City of Norfolk requested and was granted two consistency deadline extensions to June 30, 2002; and

WHEREAS the City of Norfolk adopted amendments to their program on July 9, 2002 for the purpose of removing a provision of the local Zoning Ordinance that permitted by-right encroachments into the seaward 50-foot portion of the Resource Protection Area buffer; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs previously found consistent; and

WHEREAS staff reviewed the amendments made to the City of Norfolk's adopted program for consistency with the Act and Regulations; and

WHEREAS on August 13, 2002 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Norfolk's amended Phase I program consistent with §10.1-2109 of the Act and §§ 9VAC10-20-60 1 and 2 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on September 16, 2002 by the Chesapeake Bay Local Assistance Board.

C Scott Crafton
Acting Executive Director
Chesapeake Bay Local Assistance Department

Mr. Cowling seconded the motion. Mr. Schroeder called for further comments. There were none. Mr. Schroeder called for the vote. All members voted aye.

Mr. Schroeder thanked Mr. Tyson and called for Phase II Local Program Reviews. He asked Ms. Robbie Rhur for staff's presentation for the Town of Ashland.

A copy of the Town of Ashland's Resolution was provided to the Board members before Ms. Rhur began her presentation. She provided a brief background for the Town of Ashland noting that their comprehensive plan was developed in 1982, and in 1994, the Town received a grant from the Chesapeake Bay Local Assistance Department to assist them with an update. She said that in 1996, the Town annexed 3.1 square miles of additional land from Hanover County, and this annexation and staff turnover delayed the revision of the Plan.

Ms. Rhur said that in 1999, the Board established a compliance deadline of June 30, 2000; however, the deadline was extended to December 31, 2000. She advised that on December 19, 2000, Ashland adopted a revised Plan and on March 19, 2001 the Board found the Town consistent with the Act and Regulations subject to one condition being met no later than March 31, 2002.

Ms. Rhur continued noting that amendments to the Plan add two objectives relating to redevelopment, and they were 1.) the need to manage redevelopment so that it complies with all aspects of the Town's Chesapeake Bay Ordinance, 2.) address all post redevelopment water quality so that a ten percent reduction in nutrient runoff is achieved over pre-redevelopment conditions.

Ms. Rhur briefly described the Town's Plan and its implementation strategies. She said that the Town intended to fully implement the Bay Act, including provisions for redevelopment. She said that the Town also planned to require developers to identify underground storage tanks that may be present and remove them as redevelopment occurs. Additionally, they are required to update sewer connections and submit a stormwater management plan that upgrades best management practices (BMPs) or install them in order to accommodate the new use and brings the project into compliance with improved water quality standards.

Ms. Rhur went on to say that although the Town minimally addressed this condition, staff suggested that when the Plan is next revised the Town include a more thorough analysis of opportunities to improve water quality as redevelopment occurs.

Ms. Rhur closed her comments noting that the amendment made to the Town of Ashland's comprehensive plan examined the relationship between water quality and redevelopment to a satisfactory degree, and therefore, staff believed that the condition set forth by the Board on March 19, 2001 had been met. She stated that staff recommended that Ashland's Phase II program be found consistent with the Act and Regulations.

Ms. Rhur asked if there were any questions.

Mr. Schroeder called for a motion.

Mr. Cowling motioned to find the Town of Ashland's Phase II program consistent with §10.1-2109 of the Act and §9VAC10-20-60.3 of the Regulations.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 16, 2002

RESOLUTION

LOCAL PROGRAM - PHASE II

TOWN OF ASHLAND - # 26

Determination of Consistency - Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the element in subsection 3 shall be adopted by local governments; and

WHEREAS § 10.1-2103.10 of the Chesapeake Bay Preservation Act authorizes the Board to take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the Act; and

WHEREAS the Town of Ashland adopted a Comprehensive Plan in 1982; and

WHEREAS on March 19, 2001 the Chesapeake Bay Local Assistance Board found the Town of Ashland's plan consistent with one recommendation for consistency that was to be addressed by the Town and set a compliance date of March 31, 2002; and

WHEREAS the Town Council for the town of Ashland adopted a comprehensive plan on, May 14, 2002; and

WHEREAS staff has reviewed Town of Ashland's comprehensive plan for consistency with the previous consistency recommendation and the Act and Regulations; and

WHEREAS on August 13, 2002 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Ashland's comprehensive plan consistent with § 10.1-2109 of the Act and § 9VAC10-20-60.3 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on September 16, 2002.

C. Scott Crafton
Acting Executive Director
Chesapeake Bay Local Assistance Department

Mr. Bannach seconded the motion.

Mr. Schroeder called for further comments. There were none.

Mr. Schroeder called for the vote. All members voted aye.

Mr. Schroeder asked Ms. Rhur to continue staff's presentation of the update on the adoption activities for the County of Chesterfield.

Ms. Rhur stated that on March 15, 2000, Chesterfield County adopted the last updates to its comprehensive plan. She said that staff reviewed the update and on September 18, 2000, the Board found Chesterfield County's Phase II program consistent with eight conditions. She said a compliance deadline was set for June 30, 2001.

Ms. Rhur went on to say that on August 14, 2001, Chesterfield County requested a six-month extension for the compliance deadline to December 31, 2001. She said that the Southern Area Review Committee reviewed the County's reasons for the extension request and after a brief discussion about the County's workload recommended that the deadline to June 30, 2002 be granted.

Ms. Rhur advised that Chesterfield County's staff drafted language that addressed the eight conditions and that they worked closely with staff to evaluate the progress and direction of the update. She also said that in May of 2002, County staff presented the new language to the Planning Commission. The Commission moved to present the new language at the Board of Supervisors meeting in June. Ms. Rhur said that at the June meeting, the Board of Supervisors directed County staff to meet with the development community to explain why these changes were needed and answer questions regarding the new language.

As a result the County missed their June 30 deadline and on August 13, 2002 CBLAD staff presented a draft staff report to SARC with a recommendation of inconsistent. Because the County was working cooperatively with the Department and making progress on the adoption of the Plan, the committee decided to defer action on the staff recommendation.

Ms. Rhur stated that since SARC meeting, County staff met with the development community and their concerns were addressed with a few modifications to the plan. She said that on August 20, 2002, the planning commission voted to adopt the reviewed plan and this plan will be presented to the Board of Supervisors on November 23, 2002 for adoption.

Ms. Rhur advised that if the Board adopts the new plan in November, then staff will be able to present a full staff report at the first quarterly meeting in 2003.

Ms. Rhur asked if there were any questions. There were none. She then introduced Ms. Joan Salavati who spoke briefly about a positive attitude toward the plan after staff met with officials from Chesterfield County.

It was noted by Mr. Davis that there was no action required by the Board.

Mr. Schroeder thanked Ms. Rhur and agreed that no action was required of the Board at this time. He then recognized Mr. Doug Wetmore for staff's presentation for the City of Hampton.

Mr. Wetmore provided a brief background of the City's program noting that on September 27, 1999, the Board established a Phase II consistency deadline of December 1, 2001 and that on March 18, 2002, the Board granted a six-month extension to the City's Phase II consistency deadline and established June 30, 2002 as the new compliance date.

Mr. Wetmore stated that on May 22, 2002, the Hampton City Council adopted the comprehensive plan amendments intended to address consistency with the Bay Act.

Mr. Wetmore indicated that the comprehensive plan provided a detailed description of the sensitive environmental features located within the city and that the Plan contained maps of these features. He continued by stating that the city had several programs in place to protect these features, such as flood zone requirements, citywide stormwater management regulations, and environmental education programs. He noted that because of the lack of developable land (less than 10 percent) and the city's existing environmental programs, the Department and city staff concurred that new comprehensive plan policies addressing "Physical Constraints to Development" would be unnecessary.

Mr. Wetmore continued with a discussion of the "Protection of Potable Water Supply" policy area. He indicated that the city had identified multitudes of possible threats to the potable water supply and mapped the locations of all landfills, hazardous materials sites, Superfund sites, and leaking underground storage tanks. Mr. Wetmore indicated that the Plan recognized that the city's existing stormwater management, environmental education, and sanitary sewer programs played an important role in the protection of groundwater resources, which ultimately contributes to the protection of potable water supply. Mr. Wetmore explained that the Plan contained several policies intended to protect the city's potable water supply and groundwater resources.

Mr. Wetmore continued with a discussion of the "Shoreline Erosion Control" policy area. He indicated that because the majority of the city's shoreline was developed, the comprehensive plan acknowledged that eroding shorelines could become a significant problem. Mr. Wetmore stated that the comprehensive plan contained several policies to address shoreline erosion such as recommending natural or non-structural control methods and encouraging regional erosion control planning efforts.

Mr. Wetmore continued with a discussion of the "Public and Private Access to Waterfront Areas" policy area. Mr. Wetmore indicated that several chapters of the Plan contained information about public and private access to waterfront areas and that the comprehensive plan identified water quality degradation as a possible negative side effect of increased waterfront access and it incorporated several policies to address these environmental concerns.

Mr. Wetmore continued with a discussion of the "Water Quality Improvement Through Redevelopment" policy area. He indicated that because over 90 percent of Hampton was developed, the greatest potential for water quality improvement in the city would most likely be through the redevelopment process. Mr. Wetmore said that the Plan presented multiple policies directed at achieving water quality improvements through the redevelopment of existing developed areas. He stated that these policies included encouraging the re-establishment of the RPA buffer, identifying sites for potential stormwater BMP retrofits, and incorporating CBPA requirements into all area redevelopment plans and neighborhood plans.

Mr. Wetmore concluded by stating that the 1989 comprehensive plan contained extensive environmental information, but recent amendments have transformed the Plan into a document that thoroughly incorporates the goals and expectations of the Chesapeake Bay Preservation Act. He indicated that staff recommended that the City of Hampton's 2010 Comprehensive Plan, as amended on May 22, 2002 be found consistent with the Act and Regulations.

Mr. Wetmore asked if there were any questions.

Mr. Schroeder called for a motion.

Mr. Davis motioned to find the City of Hampton's Phase II program be found consistent with §10.1-2109 of the Act and §9VAC10-20-60.3 of the Regulations.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

September 16, 2002

RESOLUTION

LOCAL PROGRAM - PHASE II

CITY OF HAMPTON - #75

Determination of Consistency - Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the element in subsection 3 shall be adopted by local governments; and

WHEREAS § 10.1-2103.10 of the Chesapeake Bay Preservation Act authorizes the Board to take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the Act; and

WHEREAS on September 27, 1999 the Chesapeake Bay Local Assistance Board established a compliance deadline of December 1, 2001 for the City to adopt a comprehensive plan consistent with § 10.1-2109 of the Act and § 9VAC 10-20-60.3 of the Regulations; and

WHEREAS on March 18, 2003, the Chesapeake Bay Local Assistance Board granted the City an extension to June 30, 2002; and

WHEREAS the City Council for the City of Hampton adopted a revised comprehensive plan on May 22, 2002; and

WHEREAS staff has reviewed the City of Hampton's comprehensive plan for consistency with the Act and Regulations; and

WHEREAS on August 13, 2002, the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Hampton's comprehensive plan consistent with § 10.1-2109 of the Act and § 9VAC10-20-60.3 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on September 16, 2002 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Acting Executive Director
Chesapeake Bay Local Assistance Department

Mr. Bannach seconded the motion.

Mr. Schroeder called for further comments. There were none.

Mr. Schroeder called for the vote. All members voted aye.

Mr. Schroeder called for the Review of Board Sponsored Activities and asked Mr. Lee Tyson to present Local Program Compliance Evaluation Procedures.

Mr. Tyson thanked members of staff and the committees, local government advisory committees, and PDC staff as well as others who have worked on the preparation of the evaluation procedures for the past two years. Mr. Tyson also noted that he would not present the history of the project since the Board had been updated a number of times, but would instead provide an overview of the policies, procedures and tools that had been developed to assist in doing local government compliance evaluations.

Mr. Tyson noted that a copy of the draft local program compliance evaluation procedure document that outlined the procedure that the staff would follow when doing the reviews was in the Board's package. He reviewed the types of information staff would be asking from local governments such as copies of local ordinances, maps, BMP Maintenance Agreements, and items the locality may hand out of public information. He said that staff would then look at this information to determine the context of the program and on the ground application of the local Bay Act program.

He said that staff was encouraging localities to be as inclusive as possible and from that a work plan would be developed with the input from the locality and approved by CBLAD staff. He said that field investigations would be conducted and checklists and reports completed for all the types of development activity that are permitted within the Chesapeake Bay Preservation Areas. He said that staff would then take this information and provide to the locality a written compliance evaluation, just as has been done for Phase I and II, and prior to the Northern and Southern Area Review Committee meetings. Mr. Tyson commented that reviews for this process would be somewhat different from Phase I and II in that the reviews would be staggered.

Mr. Tyson reviewed the stakeholder comments and staff's response and asked the Board to approve the Resolution in their package approving the compliance evaluation process.

Mr. Schroeder called for a motion.

Mr. Benser motioned to approve the Resolution Approving the Compliance Evaluation process.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
September 16, 2002

RESOLUTION

APPROVING A
COMPLIANCE EVALUATION PROCESS

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS the Chesapeake Bay Local Assistance Department has adopted a *Standard Operating Procedure* that addresses, among other items, the process for reviewing and evaluating various aspects of the local programs set forth in the Chesapeake Bay Preservation Area Designation and Management Regulations; and,

WHEREAS the staff of the Chesapeake Bay Local Assistance Department has drafted policies, procedures, and tools to be used specifically in evaluating local compliance with the Act and Regulations; and

WHEREAS these draft policies, procedures, and tools have been distributed to, and discussed with, a Local Government Advisory Committee made up of representatives from local governments across Tidewater, Virginia; and,

WHEREAS the Policy Committee of the Chesapeake Bay Local Assistance Board reviewed the draft policies, procedures, and tools at its July 24, 2002 meeting and voted to recommend their approval and use; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board hereby approves the Local Program Compliance Evaluation Procedures and Policies dated September 2002.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on September 16, 2002 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Acting Executive Director
Chesapeake Bay Local Assistance Department

Mr. Bannach seconded.

Mr. Schroeder called for further comments. There were none.

Mr. Schroeder called for the vote. All members voted aye.

Mr. Schroeder thanked Mr. Tyson and recognized Ms. Martha Little for staff's presentation of Regulatory Guidance.

Ms. Little said that staff had been working on the Regulatory Guidance Documents in order to replace the old manual, and that the Policy Committee had met and reviewed the documents on July 24, 2002. She said that the draft guidance documents for approval covered Stormwater Management Requirements, Silvicultural Operations, Nonconforming Structures and Uses, Exceptions, Resource Protection Area, Buffer Area Encroachments, Resource Protection Areas and onsite Buffer Area Delineation. She noted that guidance on Wetlands Protection and Mitigation and Intensely Developed Areas that had been pulled in order to consider further.

Ms. Little brought to the attention of the Board that staff had made one minor change to the Silviculture Guidance document and asked Mr. Wetmore to provide an explanation for the minor change.

Mr. Wetmore provided the Board with an overview of the Silvicultural Operations requirements and referenced Page 3 of the draft guidance document noting that staff had changed the wording in paragraph 2 from "the landowner must **submit a Forest Management Plan or other such documentation to the locality that demonstrates that the activity is actually a silvicultural operation and not merely a landscaping activity or other project that does not meet the true definition of silviculture under the Regulations**" to "*comply with the full Bay Act requirements or apply for a formal exception from the locality*".

Mr. Bannach asked if changing this wording came from comments from the public. Mr. Wetmore responded negatively, and explained that the decision to make the change came from staff who believed that the new wording better explained the authority of local governments over timber harvesting operations that are conducted on sites less than 20 acres in size.

Mr. Schroeder asked if there were any further questions. Mr. Davis asked if it was staff's intent to go over each policy area individually. Mr. Crafton noted that the documents had been screened and approved by the policy committee, and except as noted by the policy committee and today by Doug Wetmore, there had been no further changes.

Mr. Schroeder called for a motion.

Mr. Schroeder called for a motion for the Resolution Approving Regulatory Guidance Documents.

Mr. Benser motioned for the adoption of the Resolution approving the Regulatory Guidance Documents as submitted by staff and approved by members of the Policy Committee.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
September 16, 2002

RESOLUTION

APPROVING REGULATORY GUIDANCE DOCUMENTS

WHEREAS § 10.1-2103.6 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall provide technical assistance and advice or other aid for the development, adoption and implementation of local comprehensive plans, zoning ordinances, subdivision ordinances, and other land use and development and water quality protection measures utilizing criteria established by the Board to carry out the provisions of this chapter; and

WHEREAS the Chesapeake Bay Preservation Area Designation and Management Regulations were amended by the Board on December 10, 2001, with the revised Regulations effective on March 1, 2002; and

WHEREAS the staff of the Chesapeake Bay Local Assistance Department drafted regulatory guidance documents to provide additional guidance to local governments and other interested parties relating to the revised Regulations; and

WHEREAS on July 24, 2002 the Policy Committee of the Chesapeake Bay Local Assistance Board reviewed the following draft regulatory guidance documents: *Stormwater Management Requirements, Silvicultural Operations, Nonconforming Structures and Uses, Exceptions, Resource Protection Area: Buffer Area Encroachments, Resource Protection Area: Onsite Buffer Area Delineation*; and

WHEREAS the Policy Committee recommended minor changes to these regulatory guidance documents and recommended their approval to the Board; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board hereby approves the above regulatory guidance documents.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on September 16, 2002 by the Chesapeake Bay Local Assistance Board.

C. Scott Crafton
Acting Executive Director
Chesapeake Bay Local Assistance Department

Mr. Bannach seconded the motion.

Mr. Schroeder called for further comment. There was none.

Mr. Schroeder called for the vote. All members voted aye.

Mr. Schroeder called for a break. The meeting adjourned at 11:20 a.m. Mr. Schroeder called the meeting to order at 11:30 a.m. and called for New Business.

Ms. Little briefed the Board on issues that arose out of our guidance development process regarding Intensely Developed Areas. She noted that the briefing was an information item only and there was no action to be taken on the item. She said that some localities may also wish to speak on the topic during the public comment period.

Ms. Little went on to explain that long-standing guidance from the department had consistently been that accessory structures do not belong in the buffer and that while there may be a need for an exception for a principle structure, accessory structures are not considered necessary and are usually conveniences and therefore, in most cases, would not warrant the granting of an exception.

She said that based on the interest in new IDA designations, staff met with a group of representatives of the Hampton Roads localities and met with staff of Arlington County to discuss their issues. She said the Arlington provided staff with a tour of potential IDA sites and discussed and presented many options for management of these areas. She said that staff requested that the Hampton Roads localities provide information on the types of designation criteria and management options they are interested in pursuing, and staff continued to meet internally and held a conference call with Maryland Critical Area staff to discuss their handling of similar situations. Ms. Little advised that staff continued to request information promised by the Hampton Roads localities, but to date have received nothing.

Ms. Little then asked Ms. Smith to provide an overview on IDA's and historical perspective on how IDA's have been designated by localities and approved by the Board. She added that after Ms. Smith's presentation, she would discuss the implications of changing our policy.

Ms. Smith provided a brief background on the regulatory requirements for IDAs, an overview of existing approved IDAs, and also showed some pictures of a cross-section of existing IDAs from a number of localities.

Ms. Little said that it appeared from discussion with the localities interested in pursuing the designation of IDA's that approving newly designated IDA's which are composed of primarily older residential neighborhoods with grass lawns, would constitute a policy change on the part of the Board. She said that staff was willing to explore these options, but would ask that mitigation for the lost buffer be a component of their management plans. She stated that some examples of mitigation options included site design standards and low impact development tools like those proposed by Arlington, including source controls, re-vegetation, permeable paving, soil amendments, etc. She noted that Maryland' Buffer Exemption program, which most closely reflects the types of areas proposed as IDA's by these localities, requires stringent plantings and buffer establishment on site.

Ms. Little advised that unfortunately, the IDA's as described in our regulations do not create a good fit for some of the issues presented by these localities, and the concern over accessory structures in many ways could be better addressed through regulatory changes rather than policy changes. She also said that there is also the possibility that the new regulations have enough built-in flexibility within the exception process section to accommodate their needs, either through consent agendas, or other mechanisms. She said that one option may be to first find out how much of an issue this really becomes once the local ordinances have changed.

Ms. Little closed her comments noting that staff is interested in trying to work with our localities on this issue and welcome their proposals. Ms. Little noted that Mr. Clay Bernick wished to provide a PowerPoint presentation to the Board on issues facing Virginia Beach regarding the IDAs.

Mr. Schroeder recognized Mr. Bernick who introduced Kathy James-Webb, City of Newport News, Eric Walbera, Hampton Roads PDC, Barbara McCallum, City of Norfolk, Keith Cannady, City of Hampton, Lee Rosenberg, City of Norfolk. Mr. Bernick explained that he and others had met with staff in an effort to sort out the issues involving intensely developed areas it related to residential areas, and areas that have a number of impacts from accessory structures. He expressed his concern regarding the time and cost of the public hearing process with limited resources, and asked that more flexibility be provided in the guidance when considering the impact of the new Regulations on residential concerns in the manner in which they are approved. He said that the public had a difficult time understanding the difference between an addition to the main structure and an accessory structure and the difference in their impact on water quality. He also stated that he believed as the intensely developed areas guidance is currently written, that it is actually counter productive to water quality that is the guidance's objective, and made a point about the topography in the lower Hampton Roads area in that the lots had to be sloped toward the streets and on into drop inlets.

Mr. Bernick pointed out that the subdivisions lots that he was referring to were recorded prior to the Bay Act in 1989 and/or an older subdivision where a lot was passed over previously and at this time because of the new Regulations, the house would have to be position almost on the curb. He said that this situation was unacceptable and undesirable for the rest of the neighborhood.

Mr. Bernick advised that the big issue is that in many areas a piped Stormwater drainage system is in place and has effectively taken out the functionality of natural vegetation in the remaining buffer, and there are no other areas where accessory structures can be built.

Mr. Bernick said again that the functionality of a buffer should be the main issue and when other regulatory requirements are in place and already serve water quality such as consideration needs to be given to any further requirements by the Bay Act Regulations. He said that he believed that the buffer itself does not include a Stormwater system that bypasses the buffer, but instead uses the buffer as a Stormwater component, and where it can be demonstrated that the storm drain system is already in place, those things that are already enhancing water quality.

Mr. Bernick closed his comments by noting that there are similarities in localities and differences too, and these differences should be considered.

Mr. Crafton commented that there has been an ongoing dialog between staff and those in the Hampton Roads area, and believed that there is some middle ground, providing flexibility. He said that staff also recognized the need to be careful how staff finds middle ground. He said there are localities in similar settings who have chosen to be more restrictive – adhering to the Board’s strict interpretation of the IDA and exception rules – and to the degree that flexibility is broadened, those other localities may question why they should continue to interpret the rules restrictively. He said that localities have the freedom to make their own decisions, and the decisions of one should not dictate to another, as long as the regulations are followed.

Mr. Crafton said the buffer guidance that is coming out later will have alternatives, but he noted that buffers still have important functions, even when pipes transport stormwater under the buffer. Buffers will still intercept nutrients from rainwater and fertilizer applied to the lawn and seeping to the water’s edge through groundwater.

Mr. Bernick stated that he understood that.

Mr. Mendelsohn commented regarding accessory structures, and that it seemed that Mr. Bernick was saying that there was no other place to put them so they had to be put in the buffer. He said the question is whether or not they really need an accessory structure if the buffer is the only place it can be located.

Mr. Bernick responded that the issue should focus on the accessory structure (as contrasted with an addition), but on the relative water quality impact. Mr. Bernick stated that in his experience the issue is not so much the type of structure, but rather the size of the structure and the amount of additional water quality impact it generates.

Mr. Crafton stated that people’s property and vested rights are considered an important factor in this dialogue. He said that he was comfortable that the rules do not violate vested rights, and he wanted to be careful not to establish a precedent, especially one that would not be the answer to the issues. He noted that another policy meeting is being planned to discuss this issue and others.

Mr. Schroeder called for public comment. There was none.

Mr. Schroeder called for a motion to adjourn the meeting.

Mr. Nice motioned to adjourn and Mr. Benser seconded.

The meeting was adjourned at 12:15 p.m.

L. Clifford Schroeder
Chairman

C. Scott Crafton
Acting Executive Director